

**Memorandum of Decision: 01-20191573R
Individual Income Tax
For the Year 2018**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Indiana Residents met their burden of establishing that their failure to pay the amount of required "estimated" 2018 income taxes and to timely pay the full amount of 2018 tax was not due to negligence but that the Indiana Residents acted with reasonable care and diligence in filing their returns. However, the Department did not agree that it was responsible for reimbursing filing fees incurred when the Indiana Residents prematurely filed an appeal with the Indiana Tax Court.

ISSUE

I. Indiana Individual Income Tax - Penalties and Tax Court Filing Fee.

Authority: IC § 6-3-4-4.1(b); IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(b); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#); Indiana Judicial Branch: Filing Facts, <https://www.in.gov/judiciary/cofc/2335.html>.

Taxpayers argue that they are entitled to a refund of late penalties, underpayment penalties, and the reimbursement of an Indiana Tax Court filing fee.

STATEMENT OF FACTS

Taxpayers are Indiana residents who file for and pay Indiana individual income tax.

Taxpayers filed a 2017 income tax return. In filing their electronic 2017 return, Taxpayers calculated that they had overpaid 2017 tax and that approximately \$6,000 would be carried forward to their 2018 account. Taxpayers miscalculated their 2017 tax; the actual overpayment amount was approximately \$1,100.

Taxpayers subsequently filed their 2018 income tax return. The Indiana Department of Revenue ("Department") assessed Taxpayers two 2018 tax penalties. The Department assessed an "underpayment" penalty of approximately \$300 on the ground that Taxpayers had failed to pay the amount of estimated 2018 tax called for under Indiana law.

The Department also assessed Taxpayers a "late" penalty of approximately \$500 on the ground that Taxpayers had failed to timely pay the full amount of 2018 income tax due that year.

Believing that the Department had not properly explained the reasons for assessing the \$300 and \$500 penalties, Taxpayers paid the penalties and filed a protest with the Indiana Tax Court. In doing so, Taxpayers paid the \$120 Tax Court "filing fee" called for under Indiana's appellate court rules.

The Department determined that Taxpayers had prematurely filed their Tax Court appeal and that the matter should have been addressed by means of an administrative protest. Upon assurances that their protest would be addressed administratively, the Tax Court appeal was dismissed. The Department "docketed" Taxpayers' protest and assigned the protest to a hearing officer. An administrative hearing was conducted by telephone during which Taxpayers explained the basis for their protest. This Memorandum of Decision results.

I. Indiana Individual Income Tax - Penalties and Tax Court Filing Fee.

DISCUSSION

The issue is whether Taxpayers have established that they are entitled to a refund of the \$500 "underpayment"

penalty, the \$300 "late" penalty, and the Indiana Tax Court \$120 filing fee.

A. "Underpayment" Penalty.

IC § 6-3-4-4.1(b) imposes on each taxpayer the responsibility to make and pay a "declaration of estimated tax for the taxable years" if the amount of that estimated amount is more than \$1,000. *Id.*

Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by [IC 6-8.1-10-2.1\(b\)](#).

In turn, the underpayment penalty amount is determined under IC § 6-8.1-10-2.1(b).

Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

However, IC § 6-8.1-10-2.1(d) requires the Department to abate the underpayment penalty if the taxpayer can establish that failure to pay the full amount was "due to reasonable cause." The statute provides:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to *reasonable cause and not due to willful neglect*, the department *shall* waive the penalty.

(Emphasis added).

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the underpayment penalty - is presumptively valid.

B. Late Payment Penalty.

"Underpayment" or not, IC § 6-8.1-10-2.1(a)(2) imposes a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment." In Taxpayers' case, the Department determined that Taxpayers failed to timely pay the full amount of 2018 income tax due that year and assessed a \$300 penalty amount.

However, IC § 6-8.1-10-2.1(d) provides the same penalty relief for the late penalty if a taxpayer can establish that failure to timely pay the tax was "due to reasonable cause" and that instead the taxpayer "exercised ordinary business care and prudence" in fulfilling its obligations. [45 IAC 15-11-2\(c\)](#).

C. Indiana Tax Court Filing Fee.

The Indiana Tax Court imposes a \$120 filing fee. Indiana Judicial Branch: Filing Facts, <https://www.in.gov/judiciary/cofc/2335.html> (last visited March 9, 2020). Taxpayers state that they were forced to file an appeal with the Tax Court, paid this \$120 fee, and are now entitled to a reimbursement of this fee. Taxpayers explain that the Department, upon written request, failed to provide a reasonable explanation of why the penalties were assessed and why they owed additional 2018 Indiana income tax. In the absence of that explanation, Taxpayers state that they "had no choice but to assume that the [Department's] Demand Notice of Payment was the official notice that the DOR had denied any consideration of [their] letter." As such, Taxpayers argue they are entitled to reimbursement of the \$120 "because it was unnecessary and avoidable simply to get the attention of the DOR on this matter as [they] had previously and legitimately attempted" to do.

D. Analysis and Conclusion.

The string of events which lead to the imposition of the penalties and Taxpayers' to file an appeal with the Indiana Tax began with an entry error in filing their 2017 Indiana income tax return. Taxpayers state that they made the error in entering information into their electronic 2017 return but that their initial error was compounded by the Department's failure to timely and accurately address their concerns. Taxpayers explain that the Department never explained that the anticipated 2017 tax carry forward was reduced from \$6,000 to \$1,100 and that the Department's failure led directly to both penalties.

The Department agrees that Taxpayers erred in filing their 2017 return. However, the Department also agrees that Taxpayers have met their statutory burden of establishing that Taxpayers' mistake or mistakes were not so egregious as to constitute "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the underpayment and late penalties should be abated.

As to the Tax Court filing fee, the Department does not agree that it should "refund" this fee or even that the Department has the jurisdiction or authority to do so. Whatever failures or mistakes the Department may have made, Taxpayers "jumped the gun" by filing an appeal with the Tax Court and that the proper venue in which to resolve the penalty issues - as they have belatedly done - is to submit an administrative appeal with the Department.

FINDING

Taxpayers' protest is denied in part and sustained in part.

SUMMARY

Taxpayers are entitled to a refund of the previously paid "underpayment" and "late" penalties. Taxpayers are not entitled to a "refund" of the fee incurred in their decision to file an appeal with the Indiana Tax Court.

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